

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER)	
COOPERATIVE, INC.)	
_____)	CASE NO. 2015-00263
)	
FAILURE TO COMPLY WITH KRS)	
278.020(2))	

ORDER

By Order dated August 18, 2015, the Commission initiated this proceeding to determine whether East Kentucky Power Cooperative, Inc. ("EKPC") should be subject to the penalties prescribed in KRS 278.990 for violating KRS 278.020(2).

As set forth in the August 18, 2015 Order, this matter was opened as a result of the Commission's determination in Case No. 2013-00291¹ that EKPC violated KRS 278.020(2) through failing to procure a Certificate of Public Convenience and Necessity ("CPCN") prior to constructing a 18.5-mile dual-circuit 345/138-kv transmission line. This proceeding was initiated for the purpose of determining whether EKPC should be assessed a civil penalty pursuant to KRS 278.990 for the violation of KRS 278.020.

KRS 278.020(1) states in part:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public

¹ Case No. 2013-00291, *Harold Barker, Ann Barker and Brooks Barker V. East Kentucky Power Cooperative, Inc.* (Ky. PSC July 6, 2015).

Service Commission a certificate that public convenience and necessity require the service or construction.

KRS 278.020(2) further provides in part that:

For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity.

An informal conference was held at the Commission's offices for the purpose of discussing the issues in this case. Discussions in the course of the informal conference led to the filing, for the Commission's consideration, of a Stipulation of Facts and Settlement Agreement ("Stipulation") on October 20, 2015, a copy of which is attached as an Appendix. The Stipulation sets forth an agreed-upon summary of the facts and provides for the payment of \$2,500.00 in full settlement of this proceeding.²

In determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission notes that EKPC has agreed to the maximum possible penalty for the violation. Based upon the evidence of record and being otherwise being sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principal. The Stipulation is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED THAT:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.

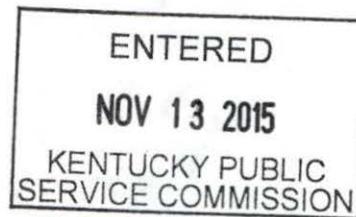
² The Stipulation contains a typographical error relating to the numbering paragraphs on page 3 of the agreement, which was noted in an October 28, 2015 letter from Jonathan Beyer, Staff Attorney, Kentucky Public Service Commission to Jeff Derouen, Executive Director, Kentucky Public Service Commission.

2. EKPC is assessed a civil penalty of \$2,500.00.

3. EKPC shall pay the amount of \$2,500.00 within 30 days of the date of this Order by cashier's check or money order made payable to the Kentucky State Treasurer and mailed to be delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, KY 40602.

4. Upon the payment of \$2,500.00 by EKPC, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2015-00263 DATED **NOV 13 2015**

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_____)	CASE NO. 2015-00263
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STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated August 18, 2015, the Commission initiated this proceeding to determine whether East Kentucky Power Cooperative, Inc. ("EKPC") should be subject to the penalties prescribed in KRS 278.990 for violating KRS 278.020(2).

KRS 278.020(1) states in part:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction

KRS 278.020(2) further provides in part that:

For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity.

The Commission's Order arose out of EKPC's construction of an 18.5 mile dual circuit 345/138-kV transmission line without obtaining a Certificate of Public

Convenience and Necessity ("CPCN"). The issue was thoroughly litigated in Case No. 2013-00291,¹ and in the July 6, 2015 Order in that matter the Commission found that EKPC violated KRS 278.020(2) through not applying for and receiving a CPCN prior to constructing the transmission line. Accordingly, the Commission ordered that this action be opened for the purpose of determining whether EKPC should be subject to penalties for the violation.

On September 3, 2015, EKPC filed a response to the Commission's August 18, 2015 Order. EKPC admitted constructing the transmission line and that it did not request or obtain a CPCN. However, it denied willfully violating KRS 278.020(2). Thereafter, an informal conference was held on September 22, 2015.

As a result of information provided by EKPC, and discussions between Commission Staff and EKPC in the course of the informal conference, EKPC and the Commission Staff submit the following Stipulation of Facts and Settlement Agreement ("Stipulation") for the Commission's consideration in rendering its decision in this proceeding:

1. EKPC agrees to pay the amount of \$2,500 in full settlement of this proceeding. The scope of this proceeding is limited by the Commission's August 18, 2015 Order as to whether EKPC should be assessed penalties under KRS 278.990 for the violation of KRS 278.020, with a maximum potential penalty of \$2,500. Neither the payment of \$2,500, nor any agreement contained in this Stipulation, shall be construed as an admission by EKPC of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Order, nor shall the Commission's acceptance of this

¹ *Harold Barker, Ann Barker and Brooks Barker v. East Kentucky Power Cooperative, Inc.* (Ky. PSC July 6, 2015).

Stipulation be construed as a finding of a willful violation of any Commission statute or regulation.

2. In the event that the Commission does not accept this Stipulation in its entirety, EKPC reserves its right to withdraw therefrom and require that a hearing be held on any and all issues herein, and that none of the provisions contained herein shall be binding upon the parties hereto, used as an admission by EKPC of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Order, or otherwise used as an admission by either party.

3. This Stipulation is for use in Commission Case No. 2015-00263. None of the provisions in this Stipulation establishes any precedent for any other case and neither EKPC nor Staff shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of EKPC service, and EKPC shall not be precluded or estopped from raising any issue, claim, or defense, therein by reason of the execution of this Stipulation.

6. EKPC and Staff agree that the foregoing Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, EKPC agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

East Kentucky Power Cooperative, Inc.

By Denver York, [Signature]

Title VP Power Delivery & System Operations

Date 10/20/2015

Staff of the Kentucky Public Service Commission

By *Justin Berger*

Title *Staff Attorney II*

Date *10/20/2015*

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